License Compact. That agreement is not one requiring the consent of Congress under the Compact Clause of the U.S. Constitution, and its construction by a signatory state, together with other traffic law unique to that particular state, does not present a federal question. Review is also unwarranted because the decision below does not conflict with the relatively few pertinent decisions of other state courts. Moreover, given the difference among the laws of the various states, this case would have only limited precedential value.

I. MARYLAND'S DECISION HARMONIZING A PROVISION OF THE DRIVER LICENSE COMPACT WITH ANOTHER MARYLAND STATUTE DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION.

Although Gwin seeks to invoke federal jurisdiction in this case under Article I, Section 10, Clause 3 of the U.S. Constitution ("Compact Clause"), his case does not present a substantial federal question because the Driver License Compact is not the type of agreement that requires congressional consent under the Compact Clause. Therefore, its application is a matter of state rather than federal law. While some types of interstate compacts do require the consent of Congress, making their interpretation a question of federal law, *see Petty v. Tennessee-Missouri Bridge Comm'n*, 359 U.S. 275, 278 (1959), "application of the Compact Clause is limited to agreements that are 'directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States.'" *United States Steel Corp. v. Multistate Tax Comm'n*, 434 U.S. 452, 471 (1978) (quoting *New Hampshire v. Maine*,

426 U.S. 363, 369 (1976) and *Virginia v. Tennessee*, 148 U.S. 503, 519 (1893)).

This Court has adhered to this distinction by rejecting attempts to apply the Compact Clause to interstate agreements that do not implicate these concerns. In *Multistate Tax Comm'n* this Court found that an interstate agreement to determine the liability of interstate taxpayers did not encroach upon federal power because that agreement, like the DLC, did not authorize member states to exercise any power they did not already have, and each state was free to enter and withdraw from the compact at any time. *Id.*, 434 U.S. at 473. Consequently, the taxation compact did not require the consent of Congress under the Compact Clause of the U.S. Constitution. *Id.* at 477-78.

Where congressional consent is unnecessary for a compact's legitimacy, it must be considered a matter of state rather than federal law. *McComb v. Wambaugh*, 934 F.2d 474, 479 (3rd Cir. 1991). For example, in *McComb*, the Third Circuit concluded that the Interstate Compact on Placement of Children was not subject to congressional consent under the Compact Clause, because it dealt with the adoption and foster care of children, "areas of jurisdiction historically retained by the states." *Id.*

Similarly, the regulation of driver's licenses is also one traditionally exercised under the police power of the states. As this Court observed almost 80 years ago, soon after the dangers of improperly operated vehicles became apparent, "[i]n the public interest the state may make and enforce regulations reasonably calculated to promote care on the part of all, residents and nonresidents alike, who use its highways." *Hess v. Pawloski*, 274 U.S. 352, 356 (1927). Thus, "[a]ny appropriate means adopted by the

states to insure competence and care on the part of its licensees and to protect others using the highway is consonant with due process." *Reitz v. Mealey*, 324 U.S. 30, 36 (1941).

History further confirms that the Driver License Compact is not the type of interstate compact requiring the consent of Congress under the Compact Clause. In 1958, Congress passed a law providing authority to enact interstate agreements promoting driver and traffic safety. Petition at 9. However, Congress repealed that act in 1966, twenty-one years before the Maryland Legislature adopted the Driver License Compact. *See* 23 U.S.C. § 313 (codifying repeal with historical reference to former language).

Since that repeal, courts have upheld the continued validity of interstate driver's license and traffic safety agreements, including the Driver License Compact, even without express congressional authorization. More specifically, Pennsylvania has rejected a claim that the Driver License Compact required congressional consent. *Koterba v. Com., Dep't of Transp., Bureau of Driver Licensing*, 736 A.2d 761, 763-66 (Pa.Cmwlth. 1999), *appeal denied*, 751 A.2d 195, *and cert. denied*, 531 U.S. 816 (2000). Applying this Court's prior decisions in *Multistate Tax Comm'n* and *Virginia v. Tennessee*, the Pennsylvania court concluded "without hesitation that the Driver's License Compact is not the sort of interstate agreement for which the compact clause mandates congressional approval," because "[n]either the sharing of information among states regarding serious motor vehicle offense convictions nor the regulation by each individual state of the driving privileges of its own citizens threatens the supremacy of the United States," and "the issuance [and denial] of driver's licenses is a function traditionally exercised by the individual state

governments." *Koterba*, 736 A.2d at 765. Additionally, "by joining the Compact, the member states have exercised no power that they could not exercise independently." *Id.* Finding it to be unquestionable that states have authority to suspend a license for a "serious motor vehicle offense either within or outside its borders," the *Koterba* court characterized the DLC as an exercise of state power that did not require congressional approval. *Id.* at 765-66. Consequently, "the effect of the repeal of 23 U.S.C. § 313 is irrelevant to the enforceability of the Compact as a matter of state law." *Id.* at 766. *Accord Roselle v. Com., Dep't of Transp., Bureau of Driver Licensing*, 865 A.2d 308, 311 (Pa.Cmwlth. 2005).

The Missouri Supreme Court drew a similar conclusion in *State v. Kurt*, 802 S.W.2d 954, 955 (Mo. 1991), when it rejected an identical challenge to the enforceability of the Nonresident Violators Compact ("NRVC"), a companion to the DLC.[5] The NRVC requires member states to suspend the driving privileges of any licensee who fails to resolve a traffic citation issued by another member state, until the home state receives satisfactory proof the licensee has complied with the terms and requirements of the out-of-state ticket. *Kurt*, 802 S.W.2d at 955. The Missouri court held that the NRVC was not an interstate compact subject to the Compact Clause of the U.S. Constitution, because it "does not encroach or interfere with the supremacy of the federal government, but simply implements the police powers of the state in adopting and enforcing speed limits." *Id. See also Bode v. Barrett*, 344 U.S. 583, 586 (1953) (agreement between

[5] Maryland is also a member of the NRVC.

states for reciprocal exemption from motor vehicle license tax was not the type of arrangement covered by Compact Clause); *State v. Lauridsen*, 312 S.W.2d 140, 143 (Mo. 1958) (finding "reciprocal arrangements concerning motor vehicle license fees are not within the scope of [the] compact clause of the Constitution").

Nor is a state's interpretation of the DLC transformed into a federal issue simply because congressional consent existed forty years ago, if it was never required by the Compact Clause. "[T]he fact that Congress enacted legislation approving compacts of this sort does not mandate the conclusion that such approval was constitutionally necessary." *Koterba*, 736 A.2d at 764. While many multilateral compacts may have obtained congressional approval, "this historical practice, which may simply reflect considerations of caution and convenience on the part of the submitting States, is not controlling." *Multistate Tax Comm'n*, 434 U.S. at 471.

Consistent with these principles, the Maryland Court of Appeals interpreted TR §§ 16-703, Art. V(2) and 16-103.1(1) under state law to ascertain whether their provisions were in conflict, and whether one provision superseded the other. The Court found no indication in the language used by the drafters of the DLC, nor in the pertinent Maryland legislative history, that required nullification of either statutory provision. Rather, they may be harmonized by simply giving effect to the words "if permitted by law" in Art. V(2). The decision of the Maryland court does not apply or decide federal statutory or constitutional law. Nor does it involve any federal court's interpretation of this language in the DLC, because there is no such interpretation to be found in federal case law. In the three or four state decisions cited by Gwin applying

Art. V(2) in conjunction with other state licensing requirements, courts interpreted the intent of their respective state legislatures under state common law principles of statutory construction. Generally, this Court will decline review of a decision supportable on state law grounds. *Maryland v. Baltimore Radio Show, Inc.*, 338 U.S. 912, 918 (1950). Therefore, a grant of certiorari would be inappropriate because this case fails to present a cognizable federal question.

II. NOT ONLY IS THE MARYLAND COURT'S CONCLUSION THAT GWIN MUST COMPLY WITH MARYLAND'S OTHER DRIVER LICENSING LAW CONSISTENT WITH THE FEW OTHER STATE DECISIONS INTERPRETING ARTICLE V(2) OF THE DRIVER LICENSE COMPACT, FURTHER REVIEW OF GWIN'S CASE WILL HAVE LITTLE PRECEDENTIAL VALUE GIVEN THE VARIATION IN STATE LICENSING LAWS AND INDIVIDUAL APPLICANTS.

In addition to the absence of any substantial federal question, this case does not involve an issue decided by a state court "in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals." Supreme Court Rule 10(b). There is no conflict between the Maryland Court of Appeals' decision in this case and that of any other state court. In its decision, the Maryland court reviewed the other state decisions that have applied Art. V(2) of the DLC, and found nothing preventing application of TR § 16-103.1(1) to disqualify Gwin from obtaining a Maryland driver's license.

Gwin argues, incorrectly, "the decision of Maryland's highest court in *Gwin*, that a state may deny a driver's license based on a foreign revocation without violating the Driver License Compact, directly conflicts with the opinions of the Supreme Courts of Alabama and Iowa in *Welch* and *Vargason*." Petition at 6. Citing a new opinion from the Appellate Court of Illinois, *Girard v. White*, 826 N.E.2d 517 (Ill.App. 2005), he maintains that "Alabama, Iowa, and Illinois interpret Article V to require a state to look to its own law to determine eligibility for reinstatement." Petition at 6. Apparently Gwin overlooks the fact Maryland did look to its own law to determine his driver license eligibility. Section 16-103.1(1) of the Maryland Transportation Article is a duly enacted Maryland statute that has been in effect for 35 years. Further, Article V of the DLC has nothing to do with reinstating applicants whose licenses have been revoked in other states. Its exception permitting a compact state to license a person after a year, while still revoked in the other state, does not "reinstate" the driver from the foreign revocation.

The conflict perceived by Gwin is either illusive or nonexistent. These other courts each interpreted the savings language "if permitted by law" to require review of any other licensing law that might prohibit or limit licensure of the particular applicant, just as the Maryland Court of Appeals did in this case. Because driver licensing laws vary from state to state, as do the circumstances and driving history of each individual applicant, the results of the "if permitted by law" inquiry will necessarily differ in each case.

For example, in *Welch v. Alabama*, the applicant's license was revoked in Florida for five years after his second DUI conviction. A little more than a year later he

moved to Alabama and sought a driver's license there. *Welch*, 519 So.2d at 517. Both Alabama and Florida are members of the DLC. As in this case, the Alabama court applied "if permitted by law" in Art. V(2) of the DLC by examining other Alabama statutes that might not permit Welch's licensure while still revoked in Florida. *Id.* at 519 (quoting language of another potentially pertinent statute). Finding no such conflict with other state laws that might require denial of a license due to extraterritorial revocation or suspension, the Alabama court concluded that issuance of a license to the applicant under Art. V(2) of the DLC was permitted by law. *Id.*

In contrast to the provision of Alabama law examined in *Welch*, the disqualification provision found in Maryland law, Md. Code Ann., Transp. II § 16-103.1(1), has *always* been construed as incorporating extraterritorial suspensions and revocations, both before and after Maryland's adoption of the DLC. In order to remove any doubt that this longstanding interpretation was the correct one, the Maryland Legislature specifically added the words "in this or any other state" in its 1993 amendment to paragraph (1) of the statute. The decisions in this case and *Welch* are therefore not inconsistent; they simply apply "if permitted by law" in Art. V(2) to the differing laws of different states. The conclusions reached by the state courts were different because the Alabama statute permitted the licensing of a driver who remains revoked in another state, while Maryland's more stringent law does not.[6]

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[6] Gwin relies primarily on what is essentially dicta from *Welch*. Petition at 13-15. After deciding that its other law did not prevent the applicant's licensure under the DLC exception while revoked in Florida, the Alabama court expressed doubt whether it could have interpreted

(Continued on following page)

In another case cited by Gwin, *State v. Vargason*, the Iowa Supreme Court's application of facts to Iowa law was so convoluted as to bear little resemblance to this case. The Iowa court attempted to sort out whether Vargason could be licensed under any Iowa law. At the time, he was subject to a six-year revocation of his Iowa driver's license and a lifetime revocation in his former home state of Florida, due to numerous DUI convictions over nineteen years. *Vargason*, 607 N.W.2d at 693. During part of this inquiry, the Iowa court ascertained whether the Florida revocation prevented re-issuance of the license. Looking at Iowa's codification of the DLC, the court noted that it included an exception permitting states to license a driver revoked out of state after one year "if permitted by law." Like the Maryland Court of Appeals, the Iowa court held that the DLC exception "merely requires that an out-of-state revocation be honored for one year from the date of revocation," and "[a]t that point the licensing state may make its own licensing decisions as permitted by the law of the licensing state." *Id.* at 697. Reviewing other Iowa statutes, the court first determined that none precluded Vargason's licensure by virtue of his out-of-state revocation. In that regard, the court ruled invalid a state department of transportation ("DOT") regulation requiring a

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Alabama law to require clearance of the Florida revocation without deviating from the DLC, although it could find no other state authority so holding. *Welch*, 529 So.2d at 519-22. The court apparently saw the exception permitting it to license a driver revoked in another state, after one year, as a mandate that it do so. The MVA does not agree with that strained interpretation of what is clearly permissive language in the DLC. In any event, this discussion in *Welch*, which was not necessary to the decision, has not been cited or followed by any other state court during the last 18 years. *Welch* hardly presents the "direct conflict" claimed by Gwin.

clearance letter from any state where the applicant was suspended or revoked, because the agency lacked statutory authority to promulgate such a regulation. *Id.* at 698. Next, the Iowa court examined the interplay of three different statutes as applied to Vargason, concluding that the DOT could not issue a driver's license to Vargason due to the six-year Iowa revocation. Finally, the court determined another provision of the Iowa Code authorized a district court to issue Vargason a restrictive, temporary license even while his privilege was revoked. *Id.* at 698-99.

There is nothing inconsistent between the Iowa court's application of Art. V(2) of the DLC and the Maryland court's application in this case. Both courts held the Driver License Compact allows a party state to license an out-of-state revoked applicant after one year. However, after the one year, the state in which the license is sought may make its own licensing decisions under that state's own law. Iowa had no statute like Maryland's TR § 16-103.1(1) prohibiting licensure while the applicant is subject to an out-of-state revocation, but did have its own laws limiting his licensure because of the Iowa revocation.

Not surprisingly, Gwin selects the inapposite part of this complex decision, the invalidity of the Iowa regulation, as the basis for the alleged conflict. His argument focuses not on the uniform interpretation between these two states on the meaning of "if permitted by law," but on the Iowa court's ruling that a regulation requiring clearance of any foreign revocation exceeded the agency's authority from the Iowa legislature. Petition at 16-17. That part of the *Vargason* decision has no bearing on this case. The Maryland Court of Appeals was not interpreting a regulation but a Maryland statute, TR § 16-103.1(1), by which the legislature clearly and unambiguously prohibited the

MVA from issuing a license to an applicant in Gwin's circumstances.

Gwin's third example of a supposedly conflicting decision, *Girard v. White*, was issued just four days after the decision in this case and is virtually on all fours with the Maryland court's decision. Like Gwin, Girard's driving privileges were permanently revoked in Florida when he accumulated four convictions for DUI over several years. *Girard*, 826 N.E.2d at 519. Like Gwin, Girard then moved to a new state, in this case Illinois, where he engaged in efforts to recover from his "high-risk" alcoholism. *Id.* at 519-20. He then sought a full driver's license under the Illinois statute adopting the DLC. The Illinois court examined Art. V(2) of the DLC, codified at 625 ILCS 5/6-704(2) (West 2000), in order to decide the meaning of "if permitted by law" as applied to a new resident whose license was revoked in another state. *Girard*, 826 N.E.2d at 520-21. As in Gwin's case, the appellate court found "[s]ection 6-704 is a discretionary grant of authority to provide relief to new residents by allowing the issuance of a driver's license when the application is consistent with relevant Illinois law," and Illinois determined it would be safe to grant a driving privilege to that person. *Id.* at 521.

The court ruled Girard's application was not permitted by another Illinois statute, 625 ILCS 5/6-208 (West 2000). *Girard*, 826 N.E.2d at 521. Similar to the Maryland law applied in this case, the Illinois statute prohibits issuance of a license to any person whose driving license or privilege has been revoked, except where the cause for the revocation has been removed, or as provided in several subparagraphs. Unfortunately for Girard, under the fourth subparagraph the state was prohibited from accepting the application of any person who had four convictions

for DUI. The disqualification included convictions of DUI under Illinois law or the equivalent DUI law of another state. *Id.* at 521. As did the Maryland Court of Appeals, the Illinois court followed principles of statutory construction to reconcile statutes *in pari materia*, holding the limitation on licensing or re-licensing any person whose privilege has been revoked for four DUIs applied to new applicants coming from another state as well as applicants from Illinois. *Id.* at 522. Thus, the court prohibited Girard's licensure despite the one-year minimum waiting period in Art. V(2) of the DLC. *Girard*, 826 N.E.2d at 523-26. Notwithstanding the purported "conflict" urged by Gwin in his petition, the Illinois court cited the Iowa Supreme Court's interpretation of "if permitted by law" in *Vargason* as support for Illinois' right to deny Girard a license consistent with the DLC. *Id.* at 523.

Gwin constructs differences between the *Girard* case and his own to conclude that, "[e]ven though Girard was denied a license, the Illinois statute's determination of eligibility without reference to foreign law is permissible under [Gwin's] reading of the Compact." Petition at 18. In doing so, however, he overlooks the fact that the Illinois statute applied in *Girard* did make reference to foreign law, by including his foreign DUI convictions and revocation as a basis to deny licensure. Also, Gwin fails to recognize that TR § 16-103.1(1) is not a "foreign" law but a Maryland law. Its disqualifications apply to all persons seeking a driver's license in Maryland, both new and renewal applicants. In other words, if a Maryland licensee commits one or more traffic violations in Florida or another state, and as a result the privilege to drive is suspended or revoked in that state, the person will not be

reissued a Maryland license until the foreign sanction has been resolved.

Gwin therefore argues incorrectly that "[r]equiring residents to seek reinstatement in the revoking jurisdiction causes a disparity in the treatment among similarly situated applicants in the home state." Petition at 22. As in the *Girard* case, Gwin does not seek parity with Maryland licensees and new applicants from non-DLC states. Rather, he seeks far more lenient treatment. His interpretation of Art. V(2) would require Maryland to lower its current licensing standards in TR § 16-103.1(1) only for him and other first time applicants coming from other DLC states where their privileges are revoked, even if the foreign applicant's driving record is worse than a Maryland licensee required to comply with those standards. Gwin's interpretation of the DLC is not the equitable one he suggests.[7]

In light of these considerations, Gwin's case does not present any important question this Court should resolve, even if the question were a federal one. Only a handful of state courts have been called upon to interpret Art. V(2) of the DLC since its promulgation in 1961 and those interpretations are easily reconciled, making guidance from

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[7] In his petition at pages 3 and 22, Gwin inappropriately cites a Maryland statute that is inapposite to his case, TR § 16-208(b) (Pet. App. at 44-47). That statute provides conditions for reinstatement of a Maryland driver's license that has been revoked by Maryland. It calls for increasingly greater periods of ineligibility for reinstatement after each successive revocation of the Maryland license. Because Gwin is not a Maryland licensee or revoked in Maryland, TR § 16-208(b) does not apply to his situation. Moreover, as explained above, TR § 16-103.1(1) is the statute that applies to a Maryland licensee whose driving privileges are revoked by a state other than Maryland. That Maryland licensee is required to comply with the terms of TR § 16-103.1(1), as is Gwin.

this Court unnecessary. Additionally, because of the variety of licensing requirements between party states, and the different ways those laws impact individual applicants with different driving histories, resolution of Gwin's case would be of little precedential value.

In reality, Gwin asks this Court to engage in hair-splitting by comparing Maryland's TR § 16-103.1(1) with other states' licensing requirements to say which state laws are preserved by "if permitted by law" under the DLC and which are not. This would only create ambiguity and confusion where none presently exists. The DLC makes no distinction in the type of state law incorporated by "if permitted by law." Instead, the DLC forecloses the interpretation Gwin urges, by providing that "[e]xcept as *expressly* required by provisions of this Compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance. . . . " TR § 16-703, Art. VI (Pet. App. at 52) (emphasis supplied). Gwin cannot show any express language in the DLC prohibiting Maryland's enforcement of TR § 16-103.1(1).

Beyond the failure of the petition to present a federal question, the cases cited in the petition largely support the Court of Appeals' interpretation of the DLC and TR § 16-103.1(1). This case presents neither a clear conflict between state courts of last resort, nor an important question requiring settlement by this Court. The issue raised by the petition is accordingly unsuitable for certiorari.

CONCLUSION

For all the above reasons, this Court should deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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